

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KIMBERLY S. RIGGS,

05-CV-6292-AS

Plaintiff,

ORDER

v.

MICHAEL J. ASTRUE,¹
Commissioner, Social Security
Administration,

Defendant.

RICHARD F. MCGINTY
McGinty & Belcher, PC
P.O. Box 12806
Salem, OR 97309
(503) 371-9636

Attorneys for Plaintiff

¹ On February 12, 2007, Michael J. Astrue became the Commissioner of Social Security and, therefore, is substituted as the Defendant in this action pursuant to Fed. R. Civ. P. 25(d)(1) and 20 U.S.C. § 405(g).

KARIN J. IMMERGUT

United States Attorney

NEIL J. EVANS

Assistant United States Attorney
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204
(503) 727-1053

MICHAEL MCGAUGHRAN

Regional Chief Counsel

JOANNE ELIZABETH DANTONIO

Special Assistant United States Attorney
Social Security Administration
701 Fifth Avenue, Suite 2900 MS/901
Seattle, WA 98104-7075 (206) 615-2730

Attorneys for Defendant

BROWN, Judge.

Magistrate Judge Donald C. Ashmanskas issued Findings and Recommendation (#17) on January 3, 2007, in which he recommended this Court affirm the Commissioner's decision denying Plaintiff's application for disability insurance benefits and supplemental security income. Plaintiff Kimberly Riggs filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th

Cir. 1981), *cert. denied*, 455 U.S. 920 (1982).

This Court has reviewed the record *de novo*, including Plaintiff's objections, and concludes the determinations of the Administrative Law Judge (ALJ) with respect to Plaintiff's functional limitations related to fibromyalgia, depression, and obesity are supported by substantial medical evidence. In addition, the Court concludes the ALJ gave clear and convincing reasons for finding that the testimony of Plaintiff and the lay witnesses was not credible.

Accordingly, the Court does not find any error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Ashmanskas's Findings and Recommendation (#17). Accordingly, the Court **AFFIRMS** the Commissioner's decision and **DISMISSES** this matter.

IT IS SO ORDERED.

DATED this 9th day of March, 2007.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge